



## Key Considerations for Marijuana Legalization

Briefing to joint meeting of the SFAC Public Safety  
and General Government subcommittees

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# In this presentation

Background

Legalizing adult use

Establishing a commercial market – structure & regulation

Establishing a commercial market – social equity

Revenues, costs, & timeline

# Study mandate

- JLARC to review *how* Virginia should legalize and regulate the growth, sale, and possession of marijuana
  - Consider best practices that could be applied to Virginia
  - Create a well-regulated commercial market that protects minors, prosecutes illegal sellers, and maintains Virginia's existing medical marijuana program
  - Address equity and economic opportunity for communities disproportionately impacted by prohibition
- JLARC did not review *whether* Virginia should legalize marijuana

SJ67 and HJ130, 2020 General Assembly.

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# Background

- Marijuana is a commonly used term for the intoxicating flower, bud, or other products derived from cannabis
- Marijuana is federally illegal but has been legalized for general adult use by 15 states and Washington D.C.
- Virginia recently decriminalized marijuana possession and legalized medical marijuana

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## Legalization of marijuana for adult use has two main parts

- Deciding how to change laws to allow adults to legally use and possess marijuana
- Establishing a commercial market where marijuana can be legally produced and sold

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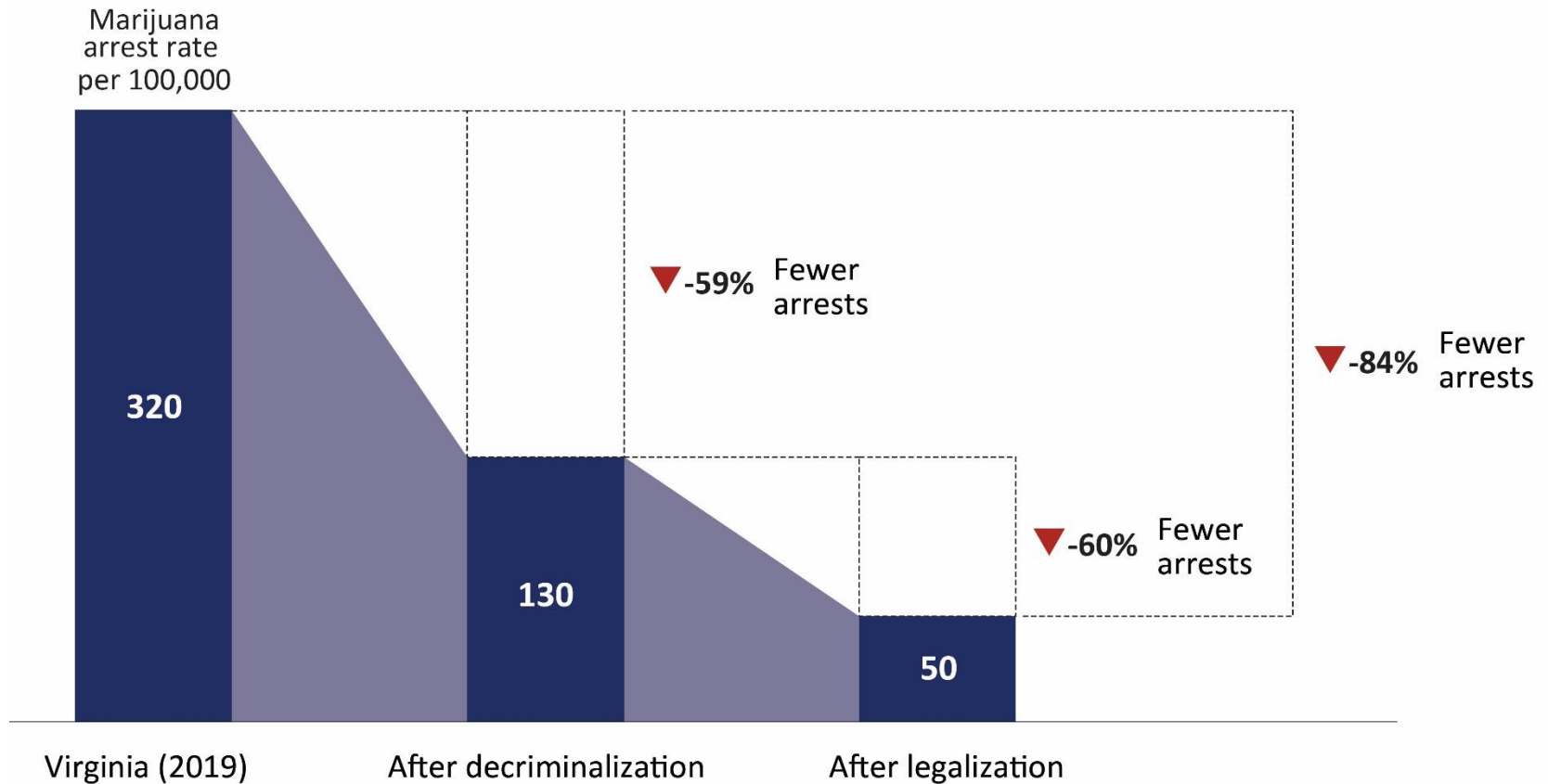
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## Virginia made 20K to 30K arrests each year for marijuana-related offenses (2010–19)

- $\approx$ 90 percent for possession of small amounts (arrests increased over time but so did use)
- $\approx$  7 percent of charges resulted in jail sentence but most of those involved serious or additional charges (2018)
- Few individuals incarcerated *solely* for possession (2019)
- Black Virginians arrested and convicted at much higher rates than white Virginians despite similar use rates

# Decriminalization and legalization would be expected to reduce marijuana arrests and convictions



Estimated reductions are based on other states' experience.



# Legalization unlikely to substantially reduce criminal justice system costs

- Legalization unlikely to lower law enforcement costs
  - Marijuana arrests account for estimated 0.1% of officers' time; marijuana seizures reported in 0.6% of service calls
- Legalization impact on court workloads would be minor
- Legalization might reduce *revenue* from fines, fees, and penalties by \$1–\$2.5M (revenue goes to general & other funds, not courts)
- Legalization might reduce operating costs associated with *all* state and local corrections by ≈\$1.5M

# Legalization would need to address criminal code and penalties for violations

- Individual possession age and allowable amounts
- Public use
- Impaired driving and use in vehicles
- Home cultivation
- Illegal cultivation and distribution



## Expungement of past marijuana offenses could benefit $\approx 120,000$ but could be labor intensive

- JLARC study looked at one-time expungement of past marijuana offenses (unlike special session bills HB 5146, SB 5043)
- “Automatic” expungement would likely benefit more people and be more equitable than petition process
- “Automatic” expungement would be labor intensive effort for state agencies and local court clerks
- Eligibility criteria would need to be kept simple

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## Key recommendations & policy options

### *If Virginia chooses to legalize marijuana ...*

Criminal and civil laws should be changed to clearly define what is legal/illegal and the punishments for what remains illegal

Law enforcement could be trained on new laws and should make greater use of existing programs that train officers to recognize drug-impaired drivers

One-time, automatic expungement process could be pursued if goal is to equitably benefit the most people

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# State commercial marijuana markets must be well regulated

- Commercial market provides place for marijuana to be legally sold to consumers
- Federal government has indicated it will not interfere if states prevent criminal activity, restrict youth access, and protect public health

# Commercial market has five major operations

## Cultivation



## Processing



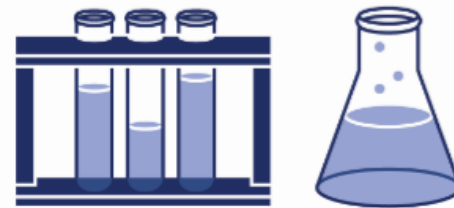
## Distribution



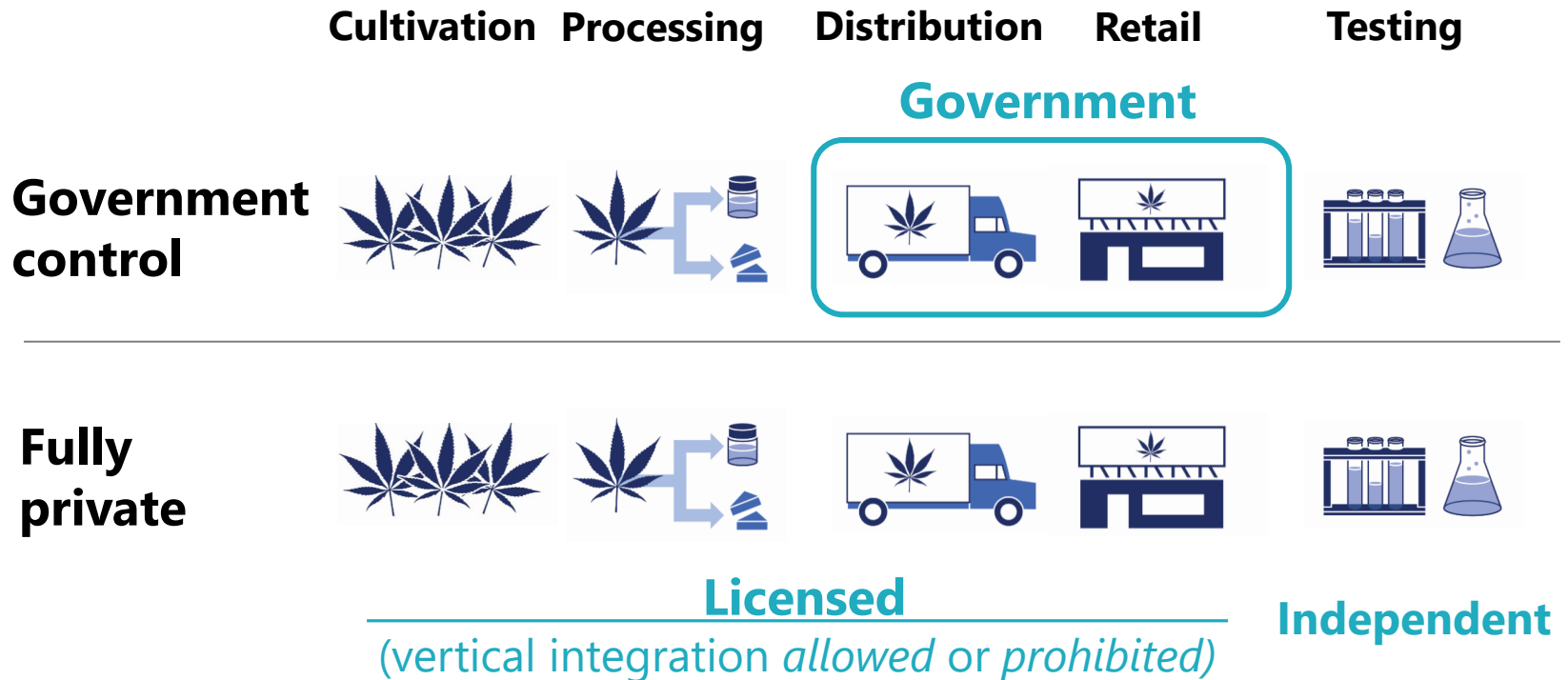
## Retail



## Testing



# Commercial operations could be partly government controlled or fully private





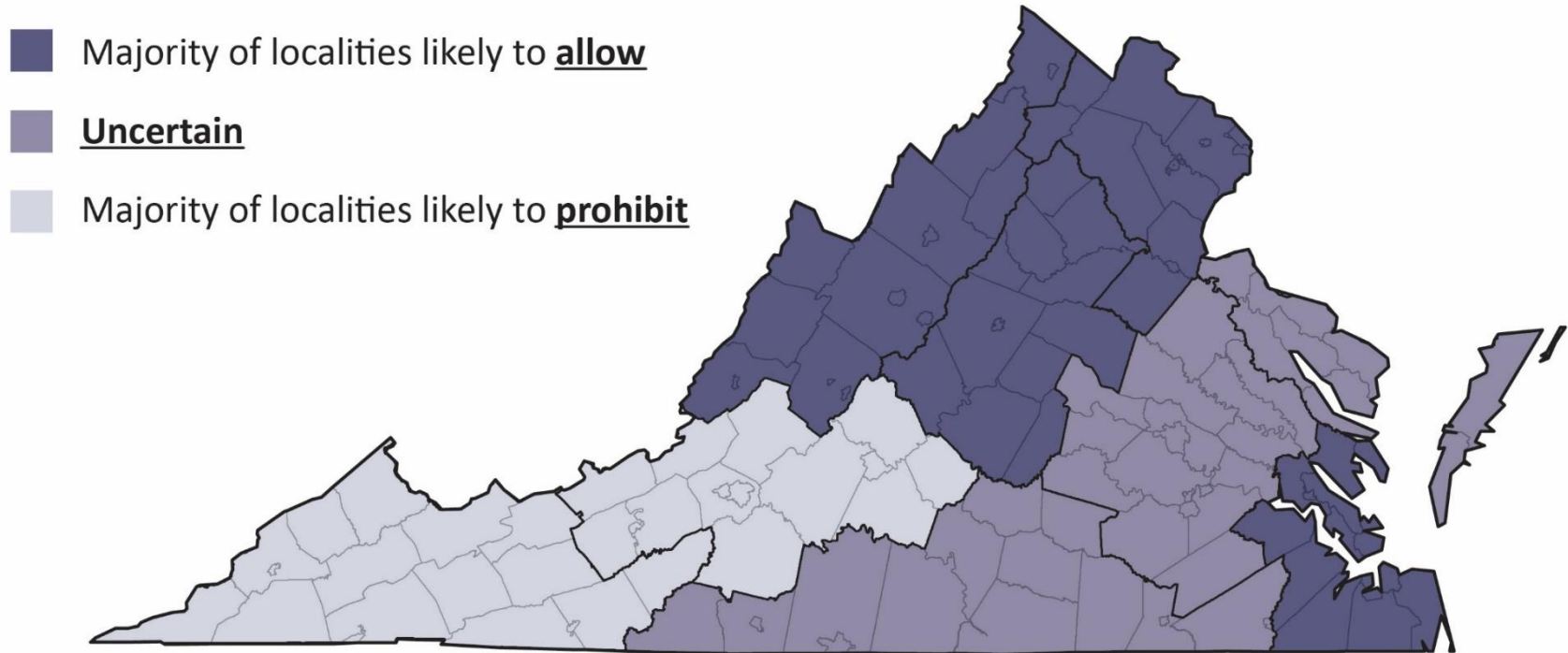
# Private models more practical than government control and would achieve different priorities

	<b>Implementation risk, time, &amp; cost</b>	<b>Priorities</b>
Government control	High	Public health Minimize illegal diversion
Private – vertical integration <i>allowed</i>	Moderate	Robust market Reduce illegal market Generate tax revenue
Private – vertical integration <i>prohibited</i>	Moderate	Small business Social equity Public health

## State can design each type of license to address specific concerns and help achieve goals

	Tiers	Caps	Options to promote small business & social equity
Cultivation	✓	✓	✓ special allowances for small cultivators
Processing	✓		
Distribution	✓		
Retail		✓	✓ special license award approach
Testing			

# State would need to decide whether to allow local prohibitions of commercial marijuana



Source: JLARC survey of city, county, and town managers and administrators

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## State would need to decide how to treat medical market and existing medical license holders

- Current medical marijuana operations could be allowed to participate in some or all aspects of commercial adult use market
- Medical operations should not be granted early entry to the commercial market before other businesses
- Eventually medical and commercial markets should be merged
- State should limit number of new medical licenses to prevent them from crowding-out commercial market

## State would need to establish regulatory authority with VABC or create a new board and agency

	VABC	New Agency
Lower operating cost	✓	
Less time to implement	✓	
Lower risk of unexpected delays	✓	
Marijuana regulation is primary mission		✓
Emphasis on special priorities, social equity		✓
Flexibility on structure and law enforcement		✓

## State would need to address public health implications of commercial legalization

- Habitual marijuana use poses several health risks, but risks generally milder than for alcohol and tobacco
- Marijuana use by adults likely to increase if commercial sales are allowed
- Youth use may not increase in near term but long-term effects are less certain
- Legalization impact on traffic accidents and use of other substances not clear (e.g., alcohol, opioids)

# Prevention campaign and restrictions on products & advertising could reduce appeal to youth



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## Key recommendations & policy options

### *If Virginia chooses to legalize marijuana ...*

Establish fully private, well-regulated commercial market that either allows or prohibits vertical integration

Give local governments several powers over commercial marijuana operations and decide whether they can prohibit commercial activity

Allow medical license holders to participate in the commercial market but do not grant them early entry; eventually merge the two markets



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## Key recommendations & policy options

### *If Virginia chooses to legalize marijuana ...*

Vest authority for regulating commercial marijuana with VABC or a new agency, depending on goals of legalization

Provide funding for prevention efforts, including a statewide, youth-oriented prevention campaign and local CSB prevention programs

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## State could implement several different social equity initiatives

	Number of beneficiaries	Magnitude of benefit	Costs
Marijuana business ownership			\$\$
Marijuana industry employment			\$
Increase funding to existing community assistance programs			\$\$\$
Community reinvestment grant fund			\$\$\$

Written report *Key Considerations for Marijuana Legalization* chapters 7&8 provide more detail on how to address social equity goals through legalizing marijuana

# Social equity business ownership could greatly benefit a relatively small number of beneficiaries

- **License structure** could be designed to maximize opportunities for small, social equity businesses
- **Assistance programs** could help social equity businesses enter and compete in the market
- State could try and direct licenses toward individuals affected by prior marijuana law enforcement (**license preferences**), but unclear if and how this could be successfully done
  - Race cannot legally be used as a criteria

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## Social equity could be promoted by directing marijuana tax revenue to specific programs

- Revenues could be directed to existing community assistance programs
  - Examples: workforce training, higher education grants, K-12 programs such as At-Risk Add-On
- Virginia could create a community reinvestment grant program
  - Grants could be targeted at projects in communities disproportionately affected by enforcement of drug laws

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## Key policy options

***If Virginia chooses to legalize marijuana and wishes to achieve social equity goals ...***

Promote marijuana business ownership through licensing and assistance programs

Promote marijuana industry employment

Direct new marijuana tax revenues to existing or new community assistance programs

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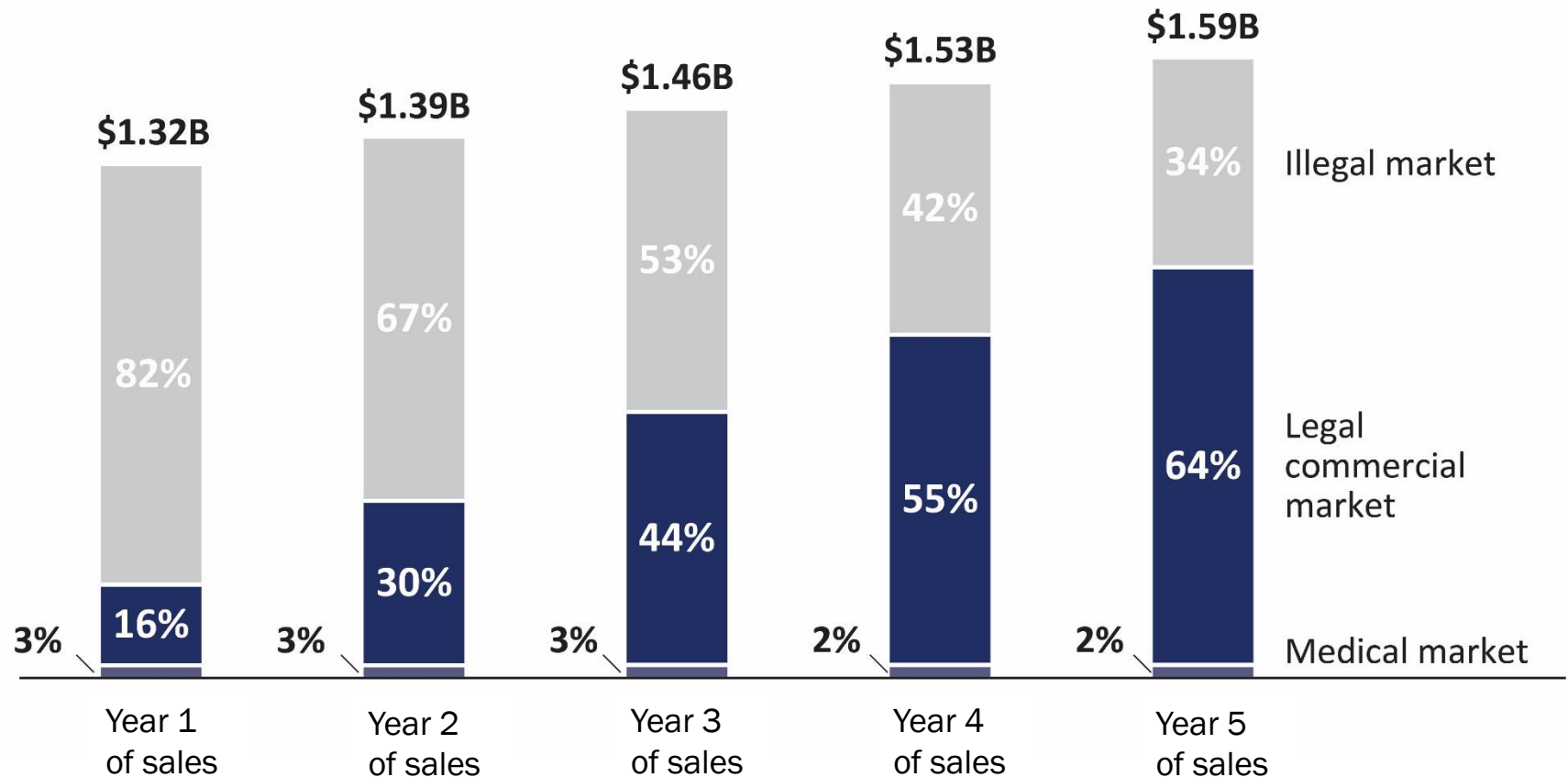
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## Tax revenue & economic impact depend on demand and competitiveness of legal market

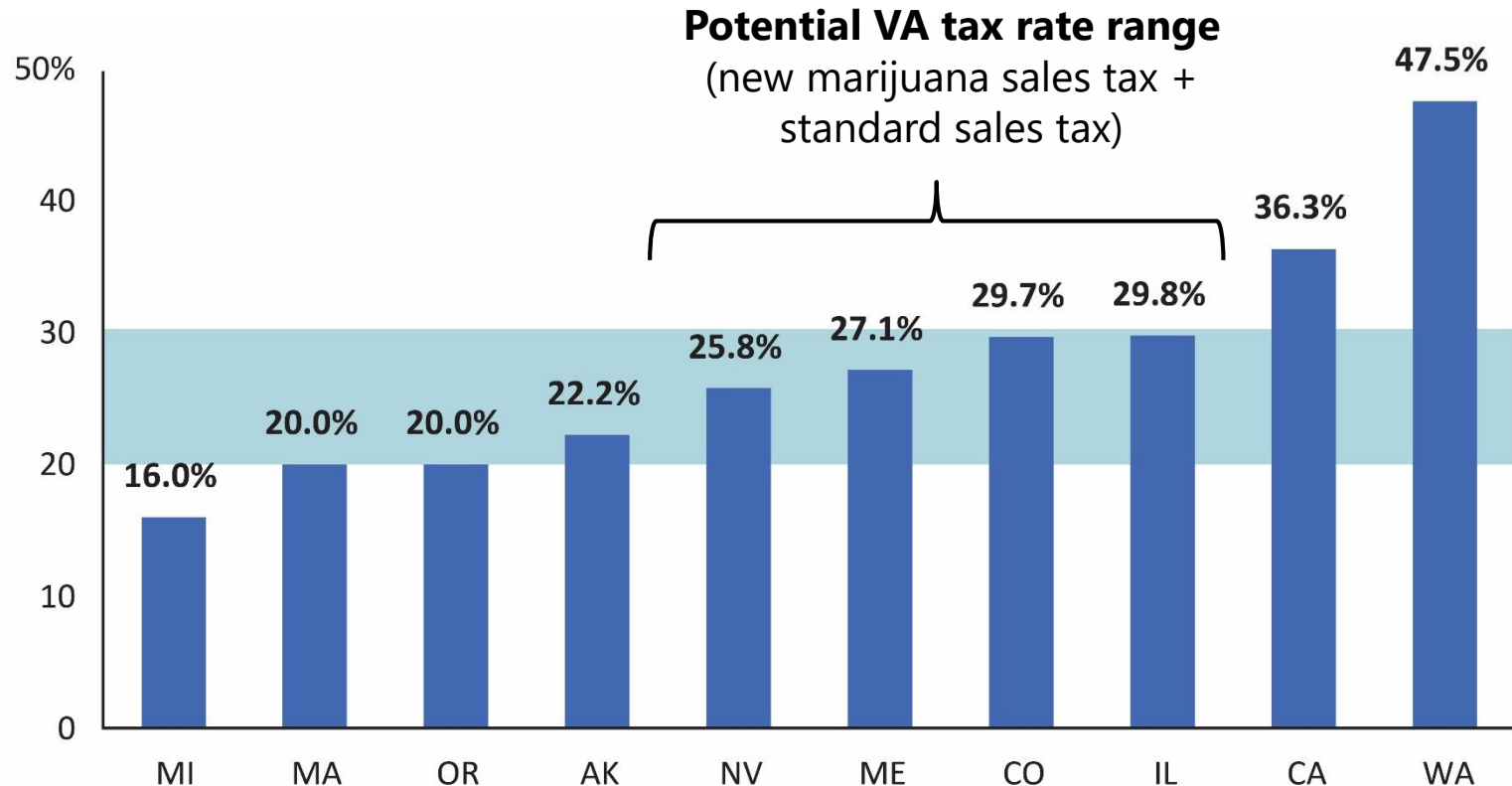
- Legal market must compete for customers against existing illegal market
- Virginia's reported marijuana use is below national average
- Existing state and local taxes would apply to new industry (e.g., income, property, BPOL)



# Legal commercial market sales are expected to grow gradually over time



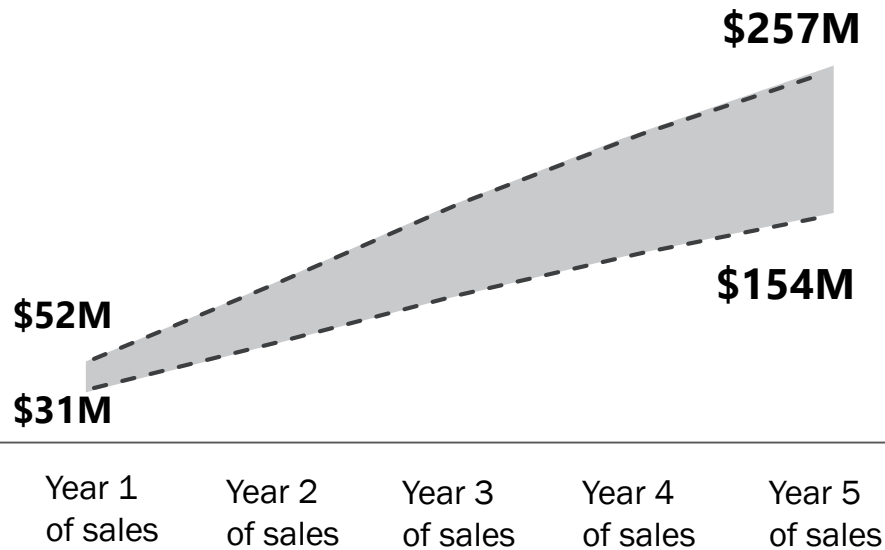
# Total sales tax rate of 25%–30% would be in upper range of what other states assess



# Taxes on marijuana sales could yield \$154–\$308 million annually (depending on rate and demand)\*

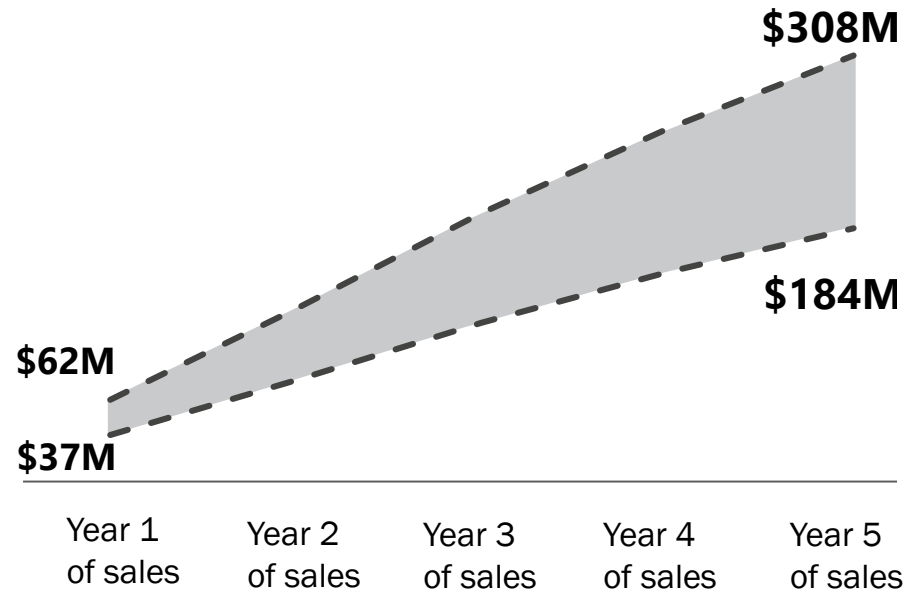
## 25% total tax rate

(20% marijuana tax + 5.3% sales tax)



## 30% total tax rate

(25% marijuana tax + 5.3% sales tax)



\*Revenue could be shared between state and local governments

## Tiered tax rate could be more protective of public health and potentially generate more revenue

- Edibles and high potency products (vape oil, other concentrates) pose greater public health risks
- Tax could be progressively higher for different products
  - Flower – 25%
  - Edibles – 35%
  - High potency – 45%
- Could generate additional ≈\$50M tax revenue by year 5

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## Key recommendations & policy options

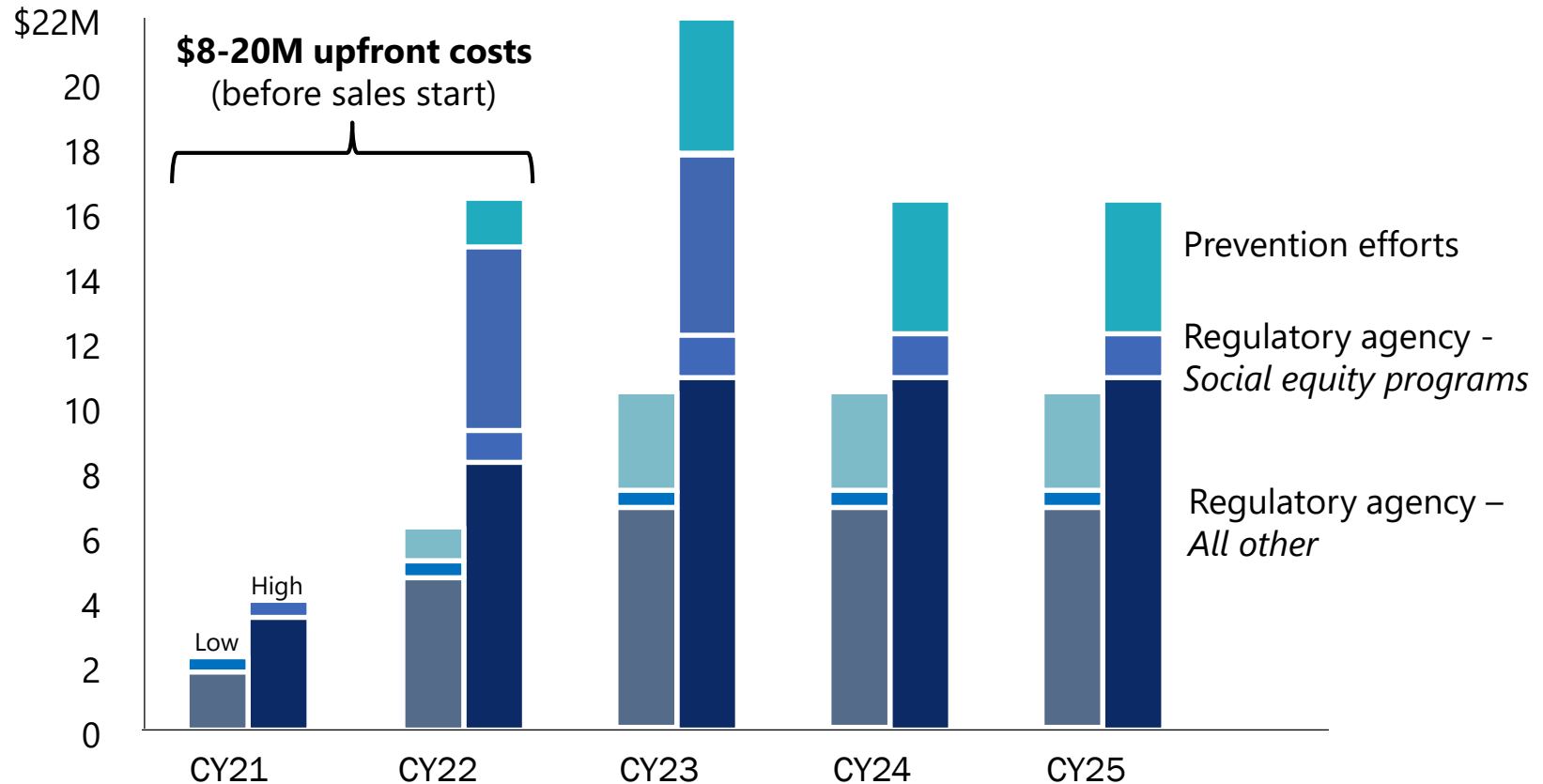
### *If Virginia chooses to legalize marijuana ...*

Apply a 25%-30% tax on marijuana sales (existing 5.3% sales tax plus new 20-25% marijuana tax)

If protecting public health is a goal, consider higher tax rates on edibles and concentrates

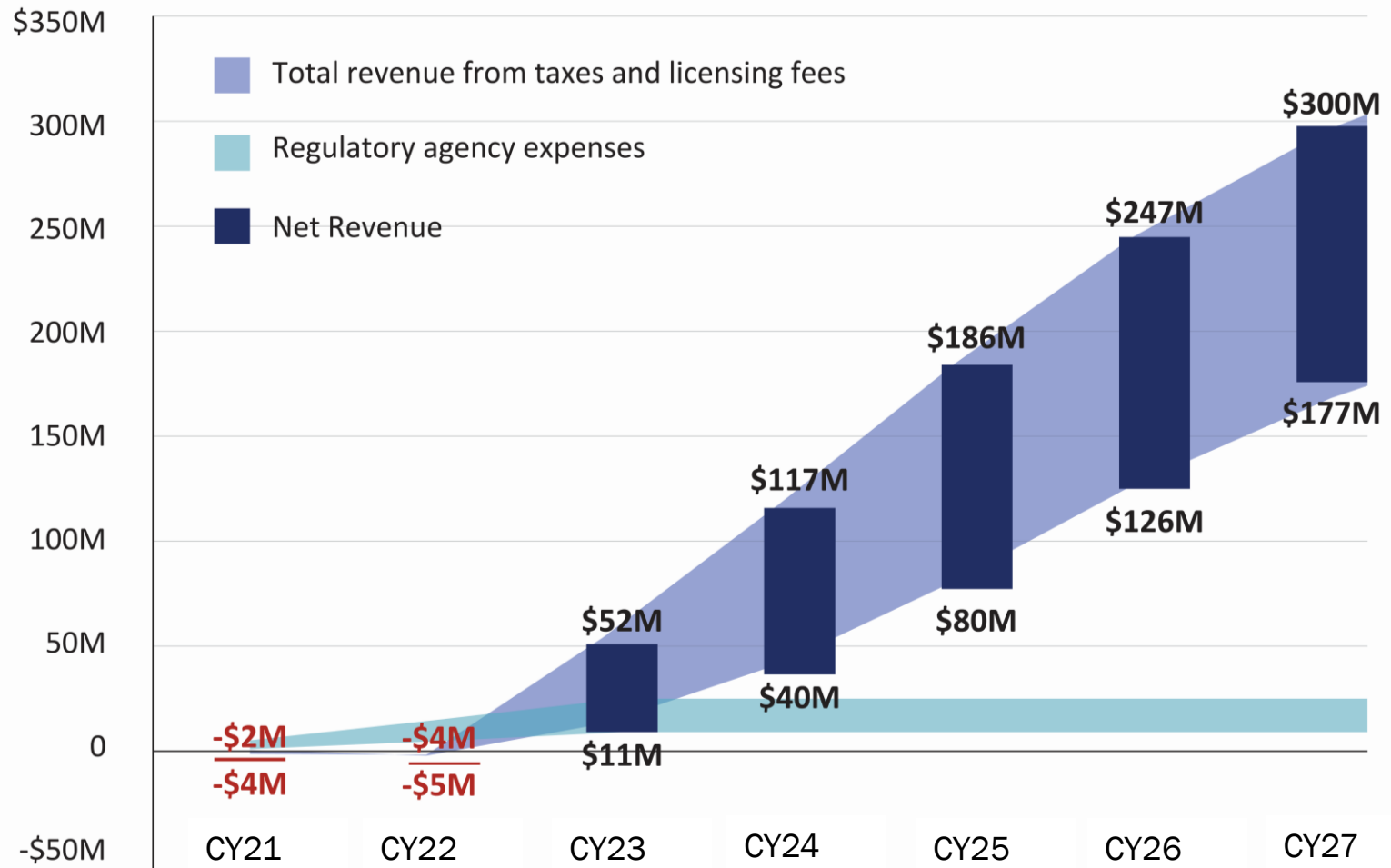
Consider sharing revenues from new marijuana taxes with local governments

# Establishment of commercial market could cost \$8–\$20 million upfront (before sales start)



Amounts are in calendar year (CY). Amounts shown for social equity in CY22 & CY23 include one-time funding for loan program. Does not show funding for a community reinvestment grant program.

# Revenue would cover expenses once sales begin



Amounts are in calendar year (CY). For simplicity of illustration, assumes a 25 percent marijuana retail sales tax

## Other states use marijuana tax revenues to help fund a wide range of programs

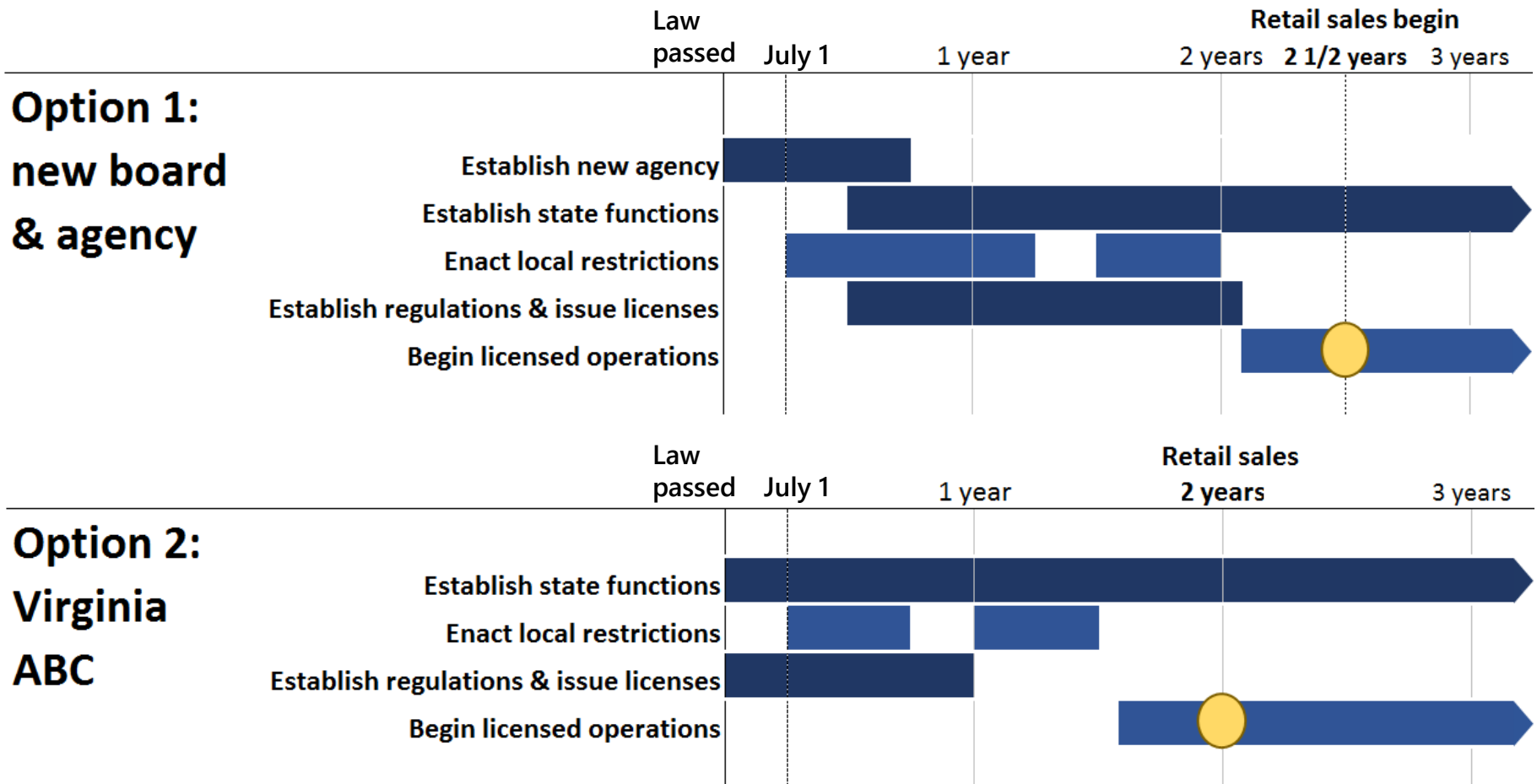
	General	Health	Education	Public safety	Community reinvestment	Other*
California		✓		✓		✓
Colorado		✓	✓			✓
Illinois	✓	✓		✓	✓	✓
Maine		✓		✓		
Mass.	✓		✓			✓
Michigan			✓			✓
Nevada			✓			✓
Oregon		✓	✓	✓		✓
Washington	✓	✓	✓			✓

\*Other programs include transportation, environment, rainy day funds, and marijuana research.

Source: Virginia Marijuana Legalization Work Group final report (2020)



# Establishment of commercial market could take two or more years



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## Questions? / Comments?

Mark Gribbin, Chief Legislative Analyst